

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS**

**Call to Order:** By **CHAIRMAN DANIEL FUCHS**, on March 6, 2001 at 3 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Daniel Fuchs, Chairman (R)  
Rep. George Golie, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Debby Barrett (R)  
Rep. Paul Clark (D)  
Rep. Ronald Devlin (R)  
Rep. Nancy Fritz (D)  
Rep. Gail Gutsche (D)  
Rep. Jeff Laszloffy (R)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Allen Rome (R)  
Rep. Jim Shockley (R)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Brett Tramelli (D)

**Members Excused:** Rep. Joe Balyeat, Vice Chairman (R)

**Members Absent:** Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Larry Jent (D)

**Staff Present:** Linda Keim, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 238, 2/28/2001; SB105,  
2/28/2001; SB 104, 2/28/2001  
Executive Action: SB 238; SB 105

**HEARING ON SB 238**

**Sponsor:** SENATOR JOHN TESTER, SD 45, BIG SANDY

**Proponents:** Jeff Hagener, Fish, Wildlife and Parks  
Janet Ellis, Montana Audubon  
Patrick Montalban, Self  
David Dittloff, Montana Wildlife Federation

**Opponents:** None

**Informational Witnesses:** None

**Opening Statement by Sponsor:**

SENATOR JOHN TESTER, SD 45, BIG SANDY said SB 238 increases nonresident fees on migratory game birds from \$5 to \$50. The reason this should be acceptable is that it puts Montana in line with surrounding states. Idaho is \$73.50, North Dakota is \$95, South Dakota is \$105, Wyoming is \$60.

**Proponents' Testimony:**

Jeff Hagener, Fish, Wildlife and Parks presented written testimony supporting SB 238 which he followed in his remarks to the Committee, **EXHIBIT**(fih51a01).

Janet Ellis, Montana Audubon said the money goes toward enhancing waterfowl habitat in the FWP program. Projects are with private landowners who are interested in enhancing waterfowl habitat. Montana Audubon supports habitat enhancement programs and urge a DO PASS on SB 238.

Patrick Montalban, representing himself, said he is an upland game bird hunter and is in support of SB 238. Has been hunting on the northern high line for years. Has had trouble finding places to hunt in recent years, and finds that out of state hunters are taking up their hunting land. Prices paid by nonresident hunters to hunt on hand leased by outfitters range from \$1500 to \$2500, and obviously the local hunter can't compete with these numbers. Hopes this Bill passes. It would bring more income into FWP, allowing them to increase the block management program which would allow hunters like himself more areas to hunt. Asks for support of SB 238.

David Dittloff, Montana Wildlife Federation said they are very supportive of SB 238. It was originally a suggestion of Private Land Public Wildlife Council. The Bill would bring prices up to

compare with those in other states and would reduce competition that resident sportsmen are now facing from nonresident sportsmen. In many places, it is difficult to find a place to hunt for quality waterfowl. It is important to note this would go toward improving waterfowl habitat, improving waterfowl productivity, improving hunting opportunities, and the economic ramifications of all the above. Recommend a DO PASS.

**Opponents' Testimony:** None

**Informational Witnesses:** None

**Questions from Committee Members and Responses:**

**REPRESENTATIVE BARRETT** said we have already had a bill to increase nonresident hunting licenses and now we have the bird license. You've heard that the reason is to keep up with the surrounding states. Are the resident fees in Montana keeping pace with the resident fees in those same states? **Jeff Hagener, FWP** said no, Montana resident fees are a lot lower than the surrounding states. These two bills are completely different. The nonresident fee increase bill was a department sponsored bill to deal with our general license fund account; this bill came from the Wildlife Federation and others who proposed to do that. It is along the same concept, they were looking at comparing it to adjacent states. But, to answer your first question, no, our fees are not at the same rate as surrounding states. They did not feel comfortable in pursuing a rate increase with residents at this time because they had not spent time with constituents. They plan to talk about that issue in the next few years, to see what resident sportsmen would be willing to go along with, and what they could bring forth in the next session.

**CHAIRMAN FUCHS** said he did not see anyone there from the outfitters; were they in the Senate Committee? **SENATOR TESTER** said no, they were not. **CHAIRMAN FUCHS** asked if they had taken a position on this? **SENATOR TESTER** said, no not that he knew of. He did not recall any opponents to it in Senate Fish & Game.

**Closing by Sponsor:**

**SENATOR TESTER** thanked the Committee for a good hearing. It is a simple bill, and everyone understands it. Would appreciate a DO PASS on SB 238.

Close Hearing on SB 238.

**HEARING ON SB 105**

**Sponsor:** SENATOR DALE MAHLUM, SD 35, MISSOULA

**Proponents:** Doug Monger, Fish, Wildlife and Parks

**Opponents:** None

**Opening Statement by Sponsor:**

SENATOR DALE MAHLUM, SD 35, MISSOULA said SB 105 will allow the establishment of an enterprise fund to manage state park visitor services revenue. It will permit site managers to replenish their inventory supply and continue providing merchandise that will be purchased with revenue from the sale of those goods. The fund consists of money from sales of educational, commemorative, and interpretive merchandise, other related goods and services, and from donations. FWP will not be in competition with local people because no one wants to go into business in a small place and make only \$5,000 to \$8,000. They can't afford to hire someone for \$7 an hour to run it. FWP already has someone there, answering questions and taking money for admissions, etc. SB 105 proposes we use those people to make some money for the state.

**Proponents' Testimony:**

Doug Monger, Fish, Wildlife and Parks presented written testimony which he followed in his remarks to the Committee, **EXHIBIT (fih51a02)**. He said SB 105 will allow FWP to operate some of their visitor centers and guest areas in a more business like manner. The funds will be used to purchase replacement inventory, as well as support the interpretive functions of FWP. Any profits made from this fund that would be used outside the intent of the program would still require appropriation by the legislature. He urged support of SB 105.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

REP. DEVLIN asked if money from sale of these items currently goes into their general operating budget? Doug Monger, FWP said that currently when an item is sold, the proceeds go back into the park's earned revenue account and are held there until the next legislature. Then FWP asks for that money to be appropriated back. It may be a wait of 3-18 months. This account would allow instantaneous access to those funds so they could replace the

inventory. **REP. DEVLIN** said Lewis and Clark Visitor's Center is leased out. Does it generate the most money in the state? **Doug Monger** said it generates \$125,000. Lewis and Clark Caverns offers a viable business opportunity for a private businessman to come into the park and make money. They do that at Hell creek State Park and Tongue Reservoir. This bill will address those sites where we are having nickle and dime sales, where no private entity would come in and try to make a living. **REP. DEVLIN** said he wants to make sure this will not affect the people that now lease the sites. Does FWP have any intention of going in to manage those sites themselves? **Doug Monger** said there is no intent to do that.

**CHAIRMAN FUCHS** asked about a video that is coming out called: "On a Saturday Night". Is that something you will offer for sale? **Doug Monger** said that is the type of item they would like to offer for sale. They are currently available.

**REP. BARRETT** asked if they foresee a future need for more employees to take tickets and sell these items? **Doug Monger** said that is the way they would handle it. The current employee or the current volunteer staffing the visitor center would provide this service. If this account generates enough funding, someday in the future, it may be used to supplement the employees giving guided tours.

**Closing by Sponsor:**

**SENATOR MAHLUM** said he is glad to carry this Bill, as he knows the importance of having inventory on the shelf. If FWP wants to do it, this is a great thing for that department, for the people, and for state government because they will make a little money that may trickle down to the general fund. Asks for support.

Close Hearing on SB 105.

**HEARING ON SB 104**

**Sponsor:** **SENATOR MIKE SPRAGUE, SD 6, BILLINGS HEIGHTS**

**Proponents:** **Jeff Hagener, Fish, Wildlife and Parks**  
**Janet Ellis, Montana Audubon**  
**David Dittloff, Montana Wildlife Federation**

**Opponents:** **None**

**Informational Witnesses:** **None**

**Opening Statement by Sponsor:**

**SENATOR MIKE SPRAGUE, SD 6, BILLINGS HEIGHTS** said SB 104 has some rule changes that are well overdue. It deals with wasted game, dog control, feeding wild animals, and some trapping regulations.

**Proponents' Testimony:**

**Jeff Hagener, Fish, Wildlife and Parks** presented written testimony that he followed in his remarks to the Committee, **EXHIBIT(fih51a03)**. He said the bill revises four fish and wildlife enforcement statutes to clarify existing law and better enable game wardens to address problems. He also introduced warden captain **Jeff Darrah**, from Missoula and **Mark Earnhardt**, law enforcement program manager, from Helena.

**Janet Ellis, Montana Audubon** said they support the bill. She noted particular support to the section that clarifies what actions are in violation in situations where bears are being fed, and end up being destroyed. This seems fair to citizens because it spells out what they can and can't do in situations where bears are being drawn into an area. SB 104 is also fair to the bears because it gives them a chance to survive.

**David Dittloff, Montana Wildlife Federation** said they support the bill because it allows the department to do their job. Wasted game is a serious hunting ethics violation. Increasing the fines sends a message that this is unacceptable behavior. Dogs chasing wildlife, particularly on the rural - urban fringes, have become a serious problem. This causes stress to the animals when they are already in jeopardy, particularly during the harsher winters. MWF also believes in the section on feeding bears. When bears are purposely and knowingly fed, whether to get pictures or because people enjoy viewing them, it becomes a health hazard for people in the local community. The end result is often that the bear is disposed of, particularly with grizzly bears. This bill gives authority and power to do something significant about this issue. Encourage a DO PASS.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. SHOCKLEY** said he will be carrying amendments to the department in regard to this bill. One provision bothers him: when deer are on his private land, eating his wife's flowers and everything else, he thinks his dog ought to be able to chase the

deer off his land. What about this scenario? **Jeff Hagener** defers to one of the wardens as to how they would handle it.

**Jeff Darrah, FWP Warden Captain in Region 2, Missoula** said if the dog could be trained to stop at his property boundary, that would be acceptable. **REP. SHOCKLEY** said there is a distinction with dogs chasing deer in the national forest and his dog chasing FWP deer off his private property. There are ten times the white tailed deer in the Bitterroot as when he was a kid. They kill over 700 on the highway, and there is not a shortage of white tailed deer. If a few more could be killed, it would be good for everybody. In the urban fringe, he thinks people should be able to let their dogs run and if the deer are there, they really don't hurt them: running the deer off is a good idea. But, there should be a distinction between the national forest or state land and private property. **Jeff Darrah** said he did not disagree on that. In Ravalli County, they continue to have the problem where dogs hamstringing fawns and chase deer; it is not a pretty sight. They have a lot of deer in Ravalli County and are trying to address that problem with a lot of liberal seasons and limits. **REP. SHOCKLEY** said ranchers were against dogs chasing sheep and cows and they can already kill anything that chases their livestock. That is the way it should be. But in this case, **REP. SHOCKLEY** feels he and his dog are being imposed upon, and he would vote against that part of the bill.

**REP. LASZLOFFY** said on Page 3, Line 5: "A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large". This seems to deal only with the defense of the dog being allowed by another person to run at large; what if somebody's dog just gets out by digging underneath its kennel fence? Is there no defense for somebody who is not willfully allowing their dog to run, but the dog just happens to get out?

**Jeff Darrah** said there are less than 65 field wardens in Montana. One of the things they take a lot of pride in is their discretion and their ability to judge each situation for what it is. What they are asking for is another tool, short of shooting the dog that is in the act of chasing or killing the deer. They don't want to kill somebody's pet, but the dog that gets out by mistake and is chasing elk or deer could be shot, because it is already too late to determine why they got out. In order to make a case against an individual whose dog did just get out, and actually be able to cite him for that violation, it would be like any other case, they would have to get their facts together and show negligence on the part of the dog owner. If they went to the dog owner and he showed them the kennel where the dog had dug out,

and it was a mistake, they could address that with a warning and the owner would not be cited.

**REP. CLARK** refers to Page 3, Lines 24-26; how do you determine that a concentration of game animals may potentially contribute to the transmission of disease? **Jeff Darrah** said that was part of the problem with the old statute; it has been unenforceable. When they have someone feeding deer, and this happens regularly in Missoula, there are a lot of deer coming into a yard. They can't prove that it causes disease, but it is a problem. There are traffic accidents because they have dogs that chase wildlife through town. They had a call where a dog was chasing a deer in Missoula and a lady hit the deer which had been feeding in someone's yard. FWP would like to add to Line 25-26: "that constitutes a threat to public safety". In another situation, someone was feeding bears and they asked him to stop as there were children in the area. He did stop for two weeks, but then started again. FWP would like to be able to say "that is a public safety threat, please stop it", and be able to enforce it.

**REP. RIPLEY** said he has a haystack right next to the highway with 25-30 deer coming in to feed every night. When he goes out to check cows that are calving in the middle of the night, the deer run across the highway. If the general public runs into the deer, who is liable? **Jeff Darrah** said that is part of living in Montana and he would not be liable. You are not purposefully feeding the deer, that is part of your agricultural operation.

**REP. BALES** refers to Page 2, Line 14-19 where it says anyone caught wasting any game animal will automatically receive a 24 month suspension of hunting privileges. Why is it necessary to have mandatory language here, where in other laws there is some discretion on the part of the judge? **Jeff Hagener** defers to **Bob Lane, Chief Legal Counsel, FWP** who answered that in terms of the forfeiture of privileges, FWP statutes set up two categories. One is for violation of commission regulations and a lesser violation; forfeiture is at the discretion of the court. For violation of a more serious nature, forfeiture has been phrased in mandatory terms in the statute. Wasted game has always been considered a more serious violation, and requires a mandatory forfeiture of privileges. However, judges make their own decisions on this. If their defense appears to the judge to be a minor violation, they routinely do not use the mandatory privilege of forfeiture, but use their own discretion. That discretion is always built into this and that is how judges exercise their discretion. **REP. BALES** asked if they would still have this discretion if SB 104 is passed? **Bob Lane** said he could guarantee that the judges will exercise that discretion. **REP. BALES** said he thought judges had to uphold the law, and this



clearly states they will do it, please explain. **Bob Lane** stated he is not saying judges don't have to uphold the law. He is just saying that judges have a certain amount of discretion in sentencing and you have to factor that in with how they interpret the mandatory nature of this. A lot of judges will consider the circumstances and believe they can use discretion. That has been the practice in the past. **REP. BALES** stated it does say they will, and the judge could get in trouble for not doing it. **REP. BALES** also questions the disposal of edible parts of the animal. Some people eat the heart and the liver; other people probably leave those in the field. Since those are edible parts; would that be considered abandoning parts of the animal? **Bob Lane** defers to **Jeff Darrah** for determination. **Jeff Darrah** answered there is a commission regulation in place that describes what portion of the animal has to come out of the field with the hunter. Usually that is four quarters and the back straps. It is the hunter's choice whether to leave the internal organs.

**REP. RICE** refers to Page 3, Line 9 where it says a person may use trained or controlled guard dogs to chase or herd away game animals to protect their agricultural products, growing crops, and stored hay and grain. Isn't this somewhat of a subjective determination; who determines if that dog is trained, protecting growing crops? **Jeff Hagener** answered that would be up to the warden's discretion. The warden who went out to investigate and follow up would find out if it was the rancher's dog, and if that was why they had the animal there. Here they are dealing with feral dogs, or dogs that are pets just running loose in the subdivision. **REP. RICE** asked if he would agree that is a subjective decision? **Jeff Hagener** said yes, it is subjective; it would be the warden's call.

**Jeff Hagener** added remarks regarding **REP. BALES'** question which concerned a person convicted of wasting game. The discretion is still there for the warden in the field. He will make the determination whether he even cites a person for wasting game to start with. No one would be cited for leaving the heart or liver in the field. The conviction does not occur with the citation.

**Closing by Sponsor:**

**SENATOR SPRAGUE** thanked the Committee for a good hearing and said that they made a change to cover concerns of the person with the guard dog, etc. The way the Senate read it was "if that is my property and I own the dog, he is guarding my things, and you will have to take my word for it". **SENATOR SPRAGUE** said if he designates the guard dog, the dog is guarding his hay fields or he is guarding the garden. That was put in so there would be no misunderstanding. The other part they changed was in the

domestic part; "if I am growing grass and my wife has flowers, and the deer raise havoc with it, my dog is there to keep the deer away, and he is guarding my assets as well". It has become a real problem. **SENATOR SPRAGUE's** son has a border collie that loves to chase deer. When he talked to FWP about the bill, he wasn't aware that FWP had a right to shoot the dog. If for some reason, the dog took off and was a mile away and there were a lot of fawns, FWP could shoot the dog if they chose to. Contacting the owner is a more humane way. The dog's owner is the one who needs to correct this situation. **SENATOR SPRAGUE** said he had heard accusations that people actually feed bear and couldn't believe it. FWP gave him a sting tape of people in the Missoula area feeding bears oreo cookies. The film is available for anyone who would like to see it. The lady was getting so she literally would put the oreo in her mouth and the bear would come and take the oreo out of her mouth because it was so comfortable with humans. These are some of the things SB 104 covers.

Close Hearing on SB 104.

**EXECUTIVE ACTION ON SB 238**

**Motion:** REP. GOLIE moved that SB 238 BE CONCURRED IN.

**Discussion:** None

**Motion/Vote:** REP. GOLIE moved that SB 238 BE CONCURRED IN. Motion carried 13-6 with Bales, Barrett, Devlin, Rice, Ripley, and Steinbeisser voting no.

REP. GOLIE will carry the Bill on the House floor.

**EXECUTIVE ACTION ON SB 105**

**Motion:** REP. DEVLIN moved that SB 105 BE CONCURRED IN.

**Discussion:** None

**Motion/Vote:** REP. DEVLIN moved that SB 105 BE CONCURRED IN. Motion carried unanimously.

REP. FUCHS will carry the Bill on the House floor.

**ADJOURNMENT**

Adjournment: 4 P.M.

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REP. DANIEL FUCHS, Chairman

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LINDA KEIM, Secretary

DF/LK

**EXHIBIT**(fih51aad)